

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
ARM 23.3.505 and 23.3.506 pertaining) ON PROPOSED AMENDMENT
to type 2 endorsements for commercial)
motor vehicle operators)

TO: All Concerned Persons

1. On December 10, 2013, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 3, 2013, to advise us of the nature of the accommodation that you need. Please contact Jaime Burkhalter, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jburkhalter@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.3.505 ELIGIBILITY FOR TYPE 2 ENDORSEMENT (1) A person is eligible to receive a type 2 endorsement if the person:

(a) is at least 18 years of age;

~~(i) however, a person who is at least 16 years of age and has a minimum of 12 months driving experience may be issued a type 2 endorsement with a "B" classification, restricted to hauling goods and property only within a 150 mile radius of his/her home or place of employment;~~

~~(ii) A person who possesses the above "underage" endorsement may have the restrictions imposed due to age removed on or after his/her 18th birthday by completing a driving examination for the type and class of endorsement desired.~~

(b) through (3) remain the same.

AUTH: 61-5-112, ~~61-5-117~~, 61-5-125, MCA

IMP: 61-5-104, 61-5-105, 61-5-110, 61-5-111, 61-5-112, 61-5-201, MCA

23.3.506 PHYSICAL QUALIFICATIONS FOR TYPE 2 ENDORSEMENT

(1) through (1)(i) remain the same.

(j) first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than ~~50~~ 40

decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard Z24.5-1951;

(k) does not use;

(i) any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, narcotic, or any habit-forming drug; and or

(ii) any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in 49 CFR 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

(l) remains the same.

AUTH: 61-5-112, ~~61-5-117~~, 61-5-125, MCA

IMP: 61-5-104, 61-5-105, 61-5-110, 61-5-111, 61-5-112, MCA

REASON: The Federal Motor Carrier Safety Regulations (at 49 CFR 355.25) require that state laws and regulations pertaining to commercial motor vehicle safety in interstate commerce must be compatible with federal standards. In addition, 61-5-112, MCA, requires state rules adopted under its authority to be specifically consistent with the federal requirements found in 49 CFR part 391. Each of the rules proposed to be amended was adopted under the authority of that statute. The amendments proposed are being made to ensure that Montana's rules relating to the age of a commercial driver and the physical qualifications of a commercial driver are consistent with the federal regulations found in 49 CFR 391.11(b)(1) and 49 CFR 391.11(b)(4).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Peter Funk, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail pfunk@mt.gov, and must be received no later than 5:00 p.m., on December 12, 2013.

5. Peter Funk, Department of Justice, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's web site at <https://doj.mt.gov/agooffice/administrative-rules>. The

department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Tim Fox
Tim Fox
Attorney General
Department of Justice

Certified to the Secretary of State November 4, 2013.